

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 26TH JUNE 2007 / 5TH ASHADHA 1929

Crl.Rev.Pet.No. 164 of 1999()

**CRA.116/1998 of SPL.COURT SPE/CBI-II & IV ADDL.SESIONS COURT, ERNAKULAM
6.12.1998.**

CC.108/1995 of JUDL. MAGISTRATE OF FIRST CLASS-I, KOCHI DT. 26.03.1998
.....

REVN. PETITIONERS: APPELLANT/ACCUSED

1. HARI, S/O. NARAYANAN, NIKATHITHARAVEETIL,
NARAKKAL (PADINGARAVEETIL,
NEAR KAVUNKAL DEVI TEMPLE,
AMBALAPPUZHA TALUK, ALAPPUZHA.)
2. VINOD, S/O. KUMARAN, NIKATHITHARAVEETIL
NARAKKAL.
3. SALU, S/O. KUNJAPPAN, PADATHARAVEETIL,
NARAKKAL.
4. RAMACHANDRAN, S/O. KRISHNANKUTTY,
POTHATHARAVEETIL, NARAKKAL.

**BY ADV. SRI.K.S.MADHUSOODANAN
SRI.C.P.PEETHAMBARAN
SRI.A.B.SUBIRE
SRI.T.N.SURESH
SRI.C.P.REJI
SRI.S.R.VINOD**

RESPONDENT/ RESPONDENT/ COMPLAINANT

**STATE OF KERALA, REP.BY SUB INSPECTOR OF
POLICE , NARAKKAL, TO BE REP.BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**

BY PUBLIC PROSECUTOR SRI.S.DILIP

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 20/06/2007, THE COURT ON 26/06/2007 PASSED THE
FOLLOWING:**

ORDER ON CRL.MP. NO.600/1999 IN CRL.RP. NO.164/1999

DISMISSED

26.06.2007

SD/- K.R.UDAYABHANU, JUDGE

/TRUE COPY/

P.S. TO JUDGE

tss

K.R. UDAYABHANU, J.

CRL.R.P.NO.164 of 1999

DATED THIS THE 26th JUNE 2007

ORDER

The revision petitioners are the accused Nos.1,2, 3 and 5 who stand convicted for the offences under Sections 143,147,148, 341, 324 read with Section 149 I.P.C. and sentenced to undergo rigorous imprisonment for one year each for the offence under Section 148 IPC and rigorous imprisonment for one year each for the offence under Section 324 IPC read with Section 149 IPC. A4 is absconding.

2. The prosecution case is that on 25-7-1994 at about 11 a.m. while PW1, the victim along with his co-workers Pws.2 and 3 were coming through the road pulling a hand-cart, the accused way-laid and inflicted injuries on PW1. A1 beat with an iron rod on his head and A3 thrust a sharp hook and inflicted injuries on his left elbow and left index finger and when PW1 fell down, A1 beat him with iron rod and A2 and A5 punched him with punch blocks. The evidence adduced in the matter consisted of the testimony of Pws.1 to 7 and Exts. P1 to P5 and Mos.1 and

2, hook and iron rod.

3. Pw1 has testified with respect to the incident fully in support of the prosecution version. PW2 has also supported the prosecution case. Pw3 has only mentioned about the incident as such but not with respect to the overt acts by the particular accused. PW4 is the witness of Ext.P2 scene mahazar in front of whose shop the incident was taken place. Pw2, who is the witness of seizure mahazar of the Mos., turned hostile. The wound certificate was not marked as the Doctor who issued the same was not available.

4. It is the contention of the counsel for the revision petitioner that the evidence of Pws.1 and 2 with respect to the incident, exactly with respect to the overt acts of the accused, are not in a uniform manner and that the evidence of PW3 is not helpful to sustain the prosecution case. PW4 to whose shop the injured allegedly ran over to escape from the attack have not testified about any of the aspects of the above incident. Further more, the wound certificate was not marked, as also the

investigation officer was not examined. In the circumstances, it cannot be said that the prosecution has proved the offence beyond reasonable doubt, it is contended.

5. I find that PW1 has testified that A1 hit him with an iron rod on his head and body and A3 hit him with a sharp hook at his left elbow and left index finger and when he fell down, A2 and A4 punched him with punch blocks. PW5, the Head Constable who recorded the F.I.S. and the body note has testified in proof of the same. It is noted in the body note that the head is seen bandaged and also there was bandage on the left elbow and the left palm. He has also noted contusion on the right hand, legs and the back. No contradictions with respect to the previous statement of the prosecution witnesses have been brought out. Hence, it cannot be said that non-examination of the investigating officer has caused any prejudice to the accused. Non-examination of the Doctor and non-marking of the wound certificate also has not caused prejudice to the accused. I find that the fact that PW2 has not testified in similar manner as PW1

does not render the prosecution evidence much infirm, considering the fact that in a sudden attack by a number of persons it may not be possible to recollect which one of the accused inflicted injuries in seriatim. I find that the concurrent findings of the courts below do not call for interference as the same is well supported by proper reasons. In the circumstances, the conviction is confirmed.

Counsel for the revision petitioner has pleaded for leniency pointing out that the incident has taken place in 1994, i.e. more than 13 years have lapsed since the occurrence and the commencement of the proceedings and that the accused and the de facto complainant belong to the same Trade Union and the assault was with respect to the dispute as a result of some internal bickerings and that right now they are in harmonious terms and at present sentencing to imprisonment only further rekindle the settled ill-feelings. In the circumstances, I find that the sentence is liable to be modified. Hence, the sentence is modified to pay a fine of Rs.5000/- each for the offence under

Section 324 read with Section 149 IPC and in default to undergo simple imprisonment for six months. No separate sentence awarded for the rest of the offences. The fine amount, if realised shall be paid to Pw1. The Crl. Revision petition is disposed of accordingly.

Sd/-

K.R.UDAYABHANU, JUDGE

ks.

K.R.UDAYABHANU, J

CRL.R.P.NO.164 of 1999

ORDER

Date: 26-6-2007